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An Early Treatise on Peace Treaties: Petrus Gudelinus between Roman Law and Modern Practice

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Most of the published works of Petrus Gudelinus (1550–1619), professor at the Louvain Civil Law Faculty, concern the public law. In his 'commentaries' on the Novellae and the Libri feodorum, he did not limit himself to the learned law and classical examples but also discussed the laws and customs of his own days. The same is true of his little-known De jure pacis commentarius, which, though formally presented as a commentary on the Pax Constantiae from the Authenticum, is a treatise on issues from current peace-treaty practice. In the most interesting part, Gudelinus addresses the problem of private property and compensation for damages. On this point, his work is more concurrent with contemporary practices than Grotius' De jure belli ac pacis libri tres (1625).

GUDELINUS' TREATISE ON THE LAW OF TREATIES

The concise treatise *De jure pacis commentarius* was published in printed form for the first time in 1620,[1] shortly after the death of its author, Petrus Gudelinus (1550–1619), professor at the Civil Law Faculty of Louvain. The subsequent Louvain edition of 1628 received as its title *De jure pacis commentarius ad constitutionem Frederici de pace Constantiense*. Later editions were again given – more correctly – the concise title of *De jure pacis commentarius*.[2]

Only a few autonomous treatises or commentaries on the law of peace treaties that precede Gudelinus can be cited. The best known is the short treatise by the fifteenth-century Italian canonist Martinus Garatus Laudensis (d. 1453).[3] More embracing works on international law or the law of war of the late sixteenth century, like those of Balthasar de Ayala (1548–84) and Albericus Gentilis (1552–1608), dealt only summarily with the subject.[4] In 1625, a few years after the death of Gudelinus, Hugo Grotius (1583–1645) devoted one chapter in the third book of his *De jure belli ac pacis* to the

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subject. The process of autonomization of the law of nations out of the learned *ius commune* and theology only began to gain momentum during the later sixteenth century. Moreover, the law of nations between states, or rather between monarchs, was still barely distinguishable from general contract law. Doubtless Grotius gave this an important, albeit prudent and incomplete, impetus.[5]

All this makes the work of Gudelinus more notable. Before making an analysis and giving an appreciation of the content of Gudelinus' work on the law of treaties, it is useful to place it within the context of the doctrinal development of the law of nations, public law and even all of legal doctrine around 1600.

THE RISE OF DOCTRINE OF THE LAW OF NATIONS AROUND 1600

The shadow cast by Hugo Grotius over the further development of the doctrine of the law of nations has for a long time forced back into the dark the works of earlier jurists and political theologians. Only around the beginning of the twentieth century did changes occur. During the 1920s and 1930s the American internationalist James Brown Scott succeeded in shedding light on the role of the Spanish neo-scholastics, in particular on the Dominican Francisco de Vitoria (*c*.1483–1546) and the Jesuit Francisco Suarez (1548–1617).[6] Since then in historiography, it is almost universally recognized that the point of departure for the modern doctrine of the law of nations is to be found within the school of the Spanish neo-scholastics.[7]

During the second half of the sixteenth century, interest in the law of nations was on the increase. Apart from the works of the Spanish neo-scholastics, some important treatises were published on aspects of the law of nations, for example the law of war and diplomatic law. They were written by jurists of the Romanist tradition such as Albericus Gentilis, an Italian working in Oxford, or by legal practitioners such as Balthasar de Ayala, a judge-advocate with the Spanish Army in the Netherlands.[8]

The increased interest in the law of nations can easily be explained. The Reformation and the almost permanent struggle between the Habsburg and Valois dynasties for hegemony in Europe had plunged the traditional European legal order into a deep crisis. The final remnants of the supremacy of the Pope and the Emperor as spiritual and secular leaders of the Latin West had been undermined. The great monarchies had achieved external sovereignty and no longer had to submit themselves to higher authorities. The medieval European legal order was shattered. In such a context there was a need for a renewed concept and the development of a new legal order for the Latin Christian world.[9]

The Reformation and the discovery and conquest of new, pagan countries across the oceans raised the question of the relationship between law and religion in international affairs. The discoveries in Asia, Africa and America gave a new dimension to maritime law. The almost permanent state of war in large parts of Europe, the ideologizing of war as a result of religious quarrels, and finally the increase in scale and the professionalization of warfare, resulting from the Military Revolution, forced a further development of the *jus in bello*. In Europe, political relations between the sovereign powers became more intense, which resulted in a rise of permanent diplomacy and important modifications to diplomatic law.[10]

THE AUTONOMIZATION OF PUBLIC LAW

The principal work by Hugo Grotius, *De jure belli ac pacis libri tres*, first published in 1625, has often been considered as the first autonomous and fairly exhaustive study on the law of nations.[11] It should, however, be put into the context of the wider long-term process, that of the scientification and the autonomization of the law of nations. In the first half of the seventeenth century, this evolution was felt within the Southern Netherlands, more particularly in and around the Faculty of Civil Law at Louvain.

During the decades between 1620 and 1650, several professors and/or *alumni* of Louvain published treatises dealing with points of doctrine on the law of nations. The law of war took a prominent place, partly as a consequence of the war which was dragging on between the Northern Provinces of the Netherlands and the Spanish Habsburgs and which exploded once again with great ferocity after 1621.

In the first half of the seventeenth century Antonio Perez (1583–1672), Diodorus Tuldenus (end 16th cent.–*c*.1645), Nicolaus Vernulaeus (1583–1649) and Franciscus Zypaeus (1578–1650) wrote treatises on public law and political theory.[12] In these they gave quite substantial treatment to certain questions of the law of nations. Their work proves that the rise of the doctrine of the law of nations must be seen within a more comprehensive process of emancipation of public law from the study and teachings of Roman law.

Although this process came only to fruition during the second half of the seventeenth century, important forerunners of the autonomization of public law and political theory appeared from the late sixteenth century onwards. This was, like the increased interest in the law of nations, the result of the religious wars and of the internal destabilization of different regimes which they caused. In most of the important European regions, relations between

the monarchy and the estates underwent important changes, an evolution of which the Netherlands gave one of the most spectacular examples. The progress of secularization and the division between political and religious morals also compelled a sharper articulation of theories legitimizing secular authority and, from that, the development of secular political morals. The works by Perez, Tuldenus, Vernulaeus and Zypaeus were only the contribution from the Southern Netherlands to a much broader development. Indeed, the work of Gudelinus preceded their contributions to the law of nations.

THE LIFE AND WORKS OF GUDELINUS

Biographies of Gudelinus are few and rather limited. In essence they all refer back to the funeral oration pronounced in 1619 in Louvain by Maximilianus Wittebort.[13]

Petrus Gudelinus, or Pierre Goudelin, was born into an aristocratic family in Ath in the County of Hainaut in 1550. At the age of 14 he was already studying in Louvain at the Arts Faculty. He was a brilliant student and did not go unnoticed. After he finished at the Faculty of Arts, he turned to law and mathematics. In 1572 he graduated as a licentiate in Civil Law and worked a few years as a lawyer in Malines and subsequently in Ath. Many jurists of the sixteenth century stayed at the university for a short time after finishing their studies before entering into a lucrative career either in one of the courts, or in local administration or by becoming a lawyer. Gudelinus did it the other way around. He would later refuse positions as a councillor in the Council of the County of Hainaut and even in the Great Council in Malines. In 1582 he returned permanently to his Alma Mater and lectured on the *Digest* and the *Codex* as *regius professor* within the Law Faculty. From 1590 onwards, he held the most prestigious Chair in the Faculty of Civil Law, that of *professor primarius*. As *primarius* Gudelinus was responsible for the teaching of the *Digestum vetus* and the *Codex*.[14] He held that chair until his death on 18 October 1619.[15]

For Gudelinus the *De jure pacis commentarius* was a logical or rather a necessary completion of his two most important works, *De jure novissimo libri sex* and *De jure feudorum commentarii*.[16] As *professor primarius* he lectured for almost three decades on the *Codex*. The traditional programme of the Law Faculty also included studying and lecturing on the *Novellae* and the *Libri feudorum*. As Gudelinus wrote in the introduction to his commentary on the *Novellae*, he fostered a special interest in public law, which he considered more '*dignus*' than private law. Nevertheless in his books on the *Novellae* he first dealt with private law and only after that with public law – secular as well as ecclesiastical – as private law was more

general and public law contained a more specific approach to law. By doing so, he followed the system of the *Digest* and the *Codex.*[17]

Towards the end of the twelfth century, the glossators had added the *Libri feudorum*, a record of Lombardian feudal law, as a tenth book to the nine books of *Novellae* within the *Authenticum*. Gradually this book had become an integral part of the authoritative *corpus* of Roman Law, which was studied and commented upon at the European Law Faculties. Following the humanistic jurists, Gudelinus was very much aware of the fact that the *Authenticum* with its nine books of the Justinian *Novellae* was a product of the glossators' time. In the introduction to his *De jure novissimo* he briefly explained the genesis of the medieval version of the *Novellae* and stated that he would disregard the non-Justinian laws added later.[18] He also mentioned that he relied on the humanist text edition of Gregor Haloander (*c.*1490–1551).[19]

This faith in the historical–philological methods of his humanist predecessors did not, however, prevent Gudelinus from studying and commenting on the *Libri feudorum*. After all, these writings were also accepted as law 'for us', contrary to the suppressed laws of the nine books which were not by Justinian (529–65).[20] At the same time another characteristic of the works of Gudelinus became apparent: his attention to the prevailing customary law and the comparative approach which he favoured along with it.[21]

DE JURE PACIS COMMENTARIUS WITHIN THE WORKS OF GUDELINUS

For a long period of time, modern historiography has accepted that the Peace Treaty of Constanz of 1183, in connection with the *Libri feudorum*, was also included in the *Volumen parvum* at the latest in the first decades of the thirteenth century. According to Gero Dolezalek it is accurate that different twelfth-century manuscripts of the *Libri feudorum* also contained the text of this Peace Treaty. Nevertheless the text was only definitely added to the tenth book with the emergence of printing. Dolezalek was of the opinion that this also explained why Accursius (*c.*1182/1185–1263) did not comment on the Peace of Constanz.[22]

The Peace of Constanz involved the Emperor Frederic Barbarossa (1152–90) and the cities of the Lombardian League. It was formulated as a privilege whereby the Emperor granted a number of rights and freedoms to the North Italian cities.[23] It can indeed be accepted as part of Lombardian feudal law in so far as relations between the cities and the Emperor as sovereign of the kingdom of Italy were concerned. During the Middle Ages two important commentaries by jurists were made on this treaty: that of the

glossator Odofredus de Denariis (d. 1265) and in particular that of the great commentator Baldus de Ubaldis (1327–1400).[24]

At the end of the fourteenth century the Peace Treaty of Constanz again came to the foreground. The Emperor Charles IV (1346–78) had made important concessions to the rulers of different North Italian cities and as a result, other cities and rulers considered their rights under the Peace of Constanz to be injured. Some jurists raised the question of whether the concessions included in the Treaty of 1183 had been unilaterally conceded by the Emperor and therefore did not bind Charles IV, or if it involved contractual obligations which had to be respected by both parties alike, the cities and the Emperor. Within the context of this discussion Baldus studied the *Pax Constantiae*. Apart from the question of whether the Peace of Constanz belonged textually to the *Volumen parvum*, it remains clear that Baldus and other jurists who dealt with the problem considered the Treaty as part of the *corpus* of Lombardian feudal law and that it therefore belonged to the sphere of the *jus commune*.[25]

At the end of the sixteenth century, the *Pax Constantiae* had definitely been added to the tenth book of the *Authenticum* and had won its place in the printed editions of the *Corpus juris civilis*. For Gudelinus to discuss this peace was also a logical continuation of his comments on the *Libri feudorum*.[26] For that matter, at the beginning of his comments Gudelinus justified his work with the remark that the Treaty of Constanz was included in the *Corpus juris civilis*. He also referred to the commentaries of Baldus.[27]

Contrary to what the titles suggest, the *commentarii* of Gudelinus upon the *Novellae*, the *Libri feudorum* and the *Pax Constantiae* were in style not really commentaries, but were treatises explaining in a systematic way one or more fields of the law. At the beginning of his work on the *Novellae* the Louvain jurist announced that he would not follow the sequence of the *Novellae*, nor of the *Codex*, but would examine the law according to the more natural order of the *Institutiones*.[28] In his *De jure pacis* Gudelinus made it immediately clear to the reader that the text of the Peace of Constanz, article by article, would by no means be the subject of commentaries. According to him, Baldus had also abandoned such a method of working. Even the content of the peace treaty hardly interested Gudelinus, if at all.[29] In fact he conceded that the presence of the *Pax Constantiae* in the *Corpus* was nothing more than an opportunity to comment on the theme of peace treaties in general.[30]

THE DIVISION OF THE TREATISE

In the 1685 folio publication of the *Opera omnia* of Gudelinus, the text of *De jure pacis commentarius* covered less than 14 pages.[31] The small treatise

was divided into 12 *capita*, in each of which Gudelinus discussed a legal problem connected with peace treaties. After a brief exposition of the objectives and the method used, Gudelinus offered a definition of the concept of peace. The second chapter contained a discussion on who had the necessary authority to make peace treaties.

With chapter three he commenced discussing the contents of peace treaties. In chapters four to eight he commented on different aspects of restitution of goods and rights after a war, and also the validity of legal proceedings of the war period. Special attention was given to the question of the extent to which the sovereign could dispose of the goods of his subjects and if they in turn could possibly claim damages from their rulers.

Chapter nine dealt with the question of whether agreements and treaties with heretics were permitted and whether a sovereign could accept heresy for the sake of peace. The attention paid by Gudelinus to this matter had of course a lot to do with the uprising in the Netherlands. The influence of the uprising was also felt in the discussion on the validity and legal force of peace treaties. After an introductory chapter on this matter, Gudelinus offered an eleventh chapter on the legal power of treaties between a sovereign and his rebelling subjects. For that matter, rebellion as a problem imbued the whole of the treatise. Gudelinus had an interest in this problem in common with Balthasar de Ayala, to whom he repeatedly referred.[32] In the twelfth and last chapter Gudelinus returned to a problem more commonly dealt with in medieval and early modern doctrine, namely whether the successors to sovereigns who had agreed the treaties were also bound by them. It is absolutely clear that the choice of these themes had nothing much to do with the content of the *Pax Constantiae*, nor with its medieval commentaries. Odofredus and Baldus were primarily concerned with imperial power in relation to the North Italian city-states.[33]

Gudelinus' themes and divisions connected closely with the reality of treaty practice in the fifteenth and sixteenth centuries. For example, the problem of goods and rights belonging to private individuals was lavishly dealt with in the peace treaties of those days. Conflicts relating to the restitution of goods often caused great difficulties for the parties involved at the point of execution of the treaties.[34] The attention given to the issue of heresy and rebellion was, as has been said, a result of the war between the Northern Provinces of the Netherlands and the Spanish monarchy. In this also, Gudelinus shows his keen interest for contemporary law and for prevailing customs.

Gudelinus' *De jure pacis* preceded the work of Hugo Grotius on war and peace by several years. In his *De jure belli ac pacis* Grotius devoted at least one chapter to the law concerning peace treaties and one to the law concerning truces.[35] These chapters, together with a few other passages

dealing with themes which were relevant to peace treaties, can be considered as a temporary high point in the development of the doctrine on that particular aspect of the law of nations.[36] Grotius also devoted a lot of attention to the problems of private goods and rights, albeit that his contribution was not as extensive as that of Gudelinus.[37] A second theme that was examined thoroughly by Grotius, but was less prominent with Gudelinus, was the question of under what conditions a treaty could or had to be considered as violated.[38] The binding power of peace treaties was considered by Grotius as part of his discussion on the binding power of treaties in general. However, the Dutch jurist, in a separate chapter, dealt with the question of whether agreements made with enemies had to be complied with. In this context the problem of treaties between sovereigns and their subjects was indirectly discussed.[39] All in all it can be put forward that the treatment of the law of nations in relation to peace treaties by Gudelinus was not much more limited than that by Hugo Grotius and was therefore quite comprehensive for the time. As there were hardly any older, systematic and exhaustive treatises or parts of treatises on this subject, this cannot be referenced back to an existing tradition. Gudelinus did not refer to the most relevant works or passages from authors like Garatus Laudensis or Gentilis. His work was also different from that of Ayala, who was nevertheless clearly a source of inspiration for him. In his treatise on the law of war and military discipline, the Spanish military judge-advocate devoted just one chapter to treaties. He discussed mainly the ancient Roman treaty practice, based on Roman literary and historical sources. As a result he also discussed typical Roman problems, which were of less significance for his own time, such as the difference between *foedus* and *sponsio*. However, he briefly mentioned the right of sovereigns to dispose of the property belonging to their subjects and the binding power of treaties on the successors of the parties involved in the treaty.[40]

Next to the influence of Ayala, a certain familiarity which Gudelinus seemed to possess with treaty practice and with the international political reality formed the basis of his thematic choices. The treatise was by no means an exposé of the subject within the delineation of a few selected authoritative legal texts. It was rather an effort to bring the customary practices and the law of peace treaties within the context of the learned law and to explain them according to the methods and with the help of the textual and historical sources of the humanist jurists.

THE PERMANENT CHARACTER OF THE PEACE

Gudelinus defined peace, *pax*, as *tranquilla libertas, bello contraria, ejusque finis atque interitus*.[41] With this definition, the Louvain jurist

introduced not only the classic antithesis to war but the definition '*interitus*' gave an extra dimension with regard to content. This term referred to the final settlement of the preceding conflict and the solution of the disputes which were the causes for the war, with an objective of giving the peace a more permanent nature.

It is precisely on this permanent nature that Gudelinus elaborated further. The perpetuity of a treaty distinguished peace, *pax*, from truce, *indutiae* or – *vulgo* – *treuga*. The fact that peace treaties were often broken did not detract from the fact that in their essence the parties had entered them for perpetuity. For this discrepancy between intention and reality, Gudelinus found other examples in Roman private law. He compared peace with the permanent nature of marriage or the irrevocable transfer of a dowry. Indeed, the dowry was often returned in case of a divorce.[42]

Like Ayala, Gudelinus reached for the ancient Roman terminology. *Foedus* as a Roman expression for a treaty was broader than *pax*. According to Livy, the Romans knew three sorts of *foedera*: one with the defeated, one after a war with no clear winner and one with a nation with whom one was not at war.[43] The last one certainly did not incorporate the idea of *pax*. Unlike Ayala, Gudelinus did not elaborate on the Roman historical division and gave no historical examples. The reference was not very meaningful and looked like nothing more than an obligatory borrowing of an often cited classification taken from Livy.[44] The concept *foedus* was not even associated with the remark made at the end of the first chapter, that a *pax* as an agreement under public law had to be differentiated from agreements under private law. Gudelinus did not at that moment attach further legal consequences to this distinction.[45] Grotius, at the beginning of his chapter on peace, also made the distinction.[46]

THE RIGHT TO MAKE PEACE TREATIES

The right to make peace treaties was limited, according to Gudelinus, to the Emperor, kings and sovereigns possessing the highest governing power in a particular state and who did not recognize a higher authority. While following Aristotle's classical division of monarchy, aristocracy and democracy, Gudelinus pointed out that this power in an aristocracy belonged to the *optimates*, and in a democracy to the people as a whole. Gudelinus emphasized, just like Grotius did after him, that the authority to make peace treaties was associated with that of declaring war.[47]

In addition Gudelinus discussed the problem of delegation of power. Within this he also referred to the difference between *foedus* and *sponsio* that was characteristic of the Roman practice. According to Roman history a *foedus* was a treaty which was binding for the *res publica* and had to be made

in earlier times by the priests of the *collegium fetialium* and then later on by authorized magistrates, acting with permission from the Senate. A *sponsio* was an agreement made on his own initiative by a general which afterwards had to be ratified before it could bind the Roman Republic.[48] Ayala and Gudelinus were both of the opinion that a general could not make a treaty on his own initiative. With this Ayala referred to the distinction between *foedus* and *sponsio* and introduced several examples from Roman history. Gudelinus referred only to a passage in Sallust, also cited by Ayala, and gave one historical example from ancient history. Furthermore he appealed to the authority of Bartolus (1314–57).[49] Gudelinus extended the discussion when he asked himself the question as to whether provincial and local magistrates, who as deputies had been granted a general authority from the sovereign, could make peace treaties. Gudelinus looked for a connection with the legal concept of procuration.[50] With arguments on the basis of the *Digest* and the *Decretals* he reached the conclusion that this authority could not be taken to be a general mandate. In addition he gave examples of *sponsiones* entered into by Roman magistrates. Four of the six examples he took from Livy could also be found in Ayala. The jurist Gudelinus offered, however, a more elaborate argument than the practician Ayala, using for this purpose texts and references out of Roman and canon law.[51]

Gudelinus followed the opinion of Ayala that the making of long-lasting truces was also the prerogative of the sovereign. Only short truces with an exclusively military finality could be made by generals or administrators on their own initiative. Just like Ayala, Gudelinus mentioned that Bartolus defended a different opinion on this point and accepted that generals and subordinate administrators could make long-lasting truces. For the argument against Bartolus, both Ayala and Gudelinus turned to procuration. A mandatory could grant no extension of payment to the debtor of his mandator without a special mandate, no more than he could dispose of the matter. The war was a means to obtain justice, and a truce constituted a delay in the pursuance of this means. Contrary to the Spaniard, the Louvain jurist referred explicitly to Jason de Mayno (1435–1519) and other commentators with regard to the title in the *Digest* about *De pactis*.[52] Gudelinus concluded his argument with an example from the Peloponnesian War, again also mentioned by Ayala.[53]

THE CONTENTS OF PEACE TREATIES

Gudelinus started his analysis, as regards the contents of peace treaties, with the remark that peace treaties resemble in many respects transactions between private litigants. In treaties, for example, beside explicit stipulations, there could also be tacit ones. Two stipulations were always to

be found in peace treaties: the suspension of hostilities and arrangements concerning conquered and seized objects.[54]

The purpose of any peace treaty being reconciliation, an *oblivio* or amnesty was at least tacitly included in all treaties. The subject of all injustices and damages inflicted during the war was declared closed. Indeed, under the law of war, causing harm or doing injustice to the enemy during a war was permissible.[55] Gudelinus was of the opinion that an amnesty had, for a long time, always been included in treaties. This was also the case with the *Pax Constantiae*. Furthermore the author offered some examples from Greek and Roman Antiquity.

At the beginning of the seventeenth century the amnesty clause had already strongly penetrated treaty practice. This clause implied that no *de facto* revenge could be taken or legal prosecution opened for actions perpetrated during the war between the belligerents, their legal subordinates and their allies. An exception was made for common crimes. The clause, however, had become general only during the fifteenth century, so that the assertion of Gudelinus that it was long-lived and appeared in most treaties was not justified.

The claim that amnesty was tacitly implied in each peace treaty was also sustained by Grotius and by the great authors on the law of nations of the eighteenth century.[56] In practice, this was not accepted as a sufficient guarantee until the eighteenth century, and from the sixteenth to the eighteenth centuries amnesty was expressly stipulated. Almost all peace treaties from these three centuries contained such an amnesty clause. Furthermore, until the middle of the seventeenth century the relevant articles of the treaty described rather extensively the contents of the amnesty. From the second half of the seventeenth century onwards, the text changed into a short standardized clause. The clause disappeared only in the nineteenth century. From then on, in doctrine as well as in practice, it was accepted that the clause was included automatically and tacitly.[57]

Gudelinus defined the amnesty clearly and in detail. Not only acts performed during the war, but also those performed as a consequence of the war were included. Contrary to what was generally accepted and stipulated in treaties, actions in compensation or *rei vindicatio* with no punitive motive were excluded from the amnesty. For this also Gudelinus referred to an example from Roman history.[58]

RESTITUTION CLAUSES

In chapters four to eight inclusive, Gudelinus elaborated on the stipulations in peace treaties concerning the restitution of goods and rights after the war. Essentially he talked about occupied territories and goods captured during

the war. The fate of prisoners of war was brought up in connection with this issue.

In chapter four Gudelinus put forward the proposition that there had to be an explicit clause of restitution if one wanted to restore the pre-war legal situation of goods and rights. Restitution of property and rights was, contrary to remission of all offences, not tacitly included in peace agreements.[59] From what follows, he seemed similarly to hold that an explicit clause was necessary for the release of prisoners of war as well. In view of the contemporary laws of war – especially those on ransom – this was only natural.[60]

Here, Gudelinus turned to the Roman *jus postliminii*. Under classical Roman law, the *jus postliminii* restored to a Roman citizen, who had been captured and enslaved by a foreign nation, his citizenship, rights and property upon his return. By Justinian's time, the *jus postliminii* had already for a long time become a right by and large restricted to prisoners of war. Gudelinus however asked whether the *jus postliminii* was also valid in cases where there were no stipulations in the treaty about the restitution of goods and rights and the release of prisoners of war. In fact the question was whether the *jus postliminii* applied in peacetime as well as in wartime.

Gudelinus referred to the famous fragment from the *Digest* by Pomponius on the *jus postliminium in pace*.[61] The fragment referred to the situation of a Roman citizen taken captive by a people with whom the Roman were not at war but with whom they had no treaty of *hospitium* or *amicitiae*.[62] According to Gudelinus however, *jus postliminii in pace* meant that, even when nothing was stipulated in the peace treaty, prisoners of war were automatically released once the peace was signed. Even more so, Gudelinus seemed to imply that the existence of *jus postliminii in pace* meant the same as a general restitution of all captured goods. In particular towns and fortifications would also be delivered up.[63]

In view of his interpretation of *postliminium*, Gudelinus could not but answer negatively to the question of whether *postliminium* applied *in pace* in order to sustain that restitution and release had to be expressly stipulated in the treaty, and in order to uphold the right to booty and ransom. He had to refute Accursius' position for that. Gudelinus founded his opinion upon two text fragments from the *Digest*.[64] He reproached Accursius and his followers that they had given too broad an interpretation to the text.[65] At the same time he rejected a possible counter-argument made up on the basis of the famous text fragment of Pomponius. Gudelinus pointed out that Pomponius restricted the latter only to nations with whom no treaty of friendship or alliance existed and therefore were also considered as enemies in peacetime.[66]

Restitution of goods was only possible after a war with a *hostis justus*. According to Gudelinus this had to be another sovereign or another nation.

Pirates, robbers or rebels did not enjoy the benefits of the *jus in bello* and could obtain nothing on the basis of the law of war. Therefore they could not keep goods of the opposing party by right, so the *jus postliminii* – only during the war itself – as well as the clause of restitution was not applicable.[67]

In the context of this discussion, the author touched for the first time on an issue regarding warfare between a sovereign and his rebelling subjects. In other words, he reflected upon the war in the Low Countries. Gudelinus departed from a discriminatory concept of war. Rebels could be considered by the sovereign as *hostes*, while he alone could enjoy the advantages of the law of war. On the other hand, rebels, who had no right to raise arms against their sovereign, could not appeal to the law of war. They could only obtain restitution of their goods by explicit stipulation in the treaty, or thanks to regal magnanimity. Gudelinus pointed out that Frederic Barbarossa showed such magnanimity on the occasion of the *Pax Constantiae*. This passage, in the light of the general rule that restitution had to be explicitly agreed after the war between the *justi hostes*, made sense only when it was read simultaneously with the preceding one dealing with pirates, robbers and rebels. From this simultaneous reading one could deduce that in fact, according to Gudelinus, the *justus hostis* fighting against a rebel could never lose his claim over lost goods and possessions, so that in his case a clause of restitution was redundant. The loot and territories taken from the rebels were considered as just prizes under the law of war.[68] Only by an explicit stipulation in favour of these pirates, robbers or rebels could this 'inequality' could be lifted.

PRIVATE GOODS AND RIGHTS

In the next chapter Gudelinus described the contents and the limitations of the restitution clauses in peace treaties. He made it clear that it was not confined to goods and rights falling under the *jus postliminii*. Furthermore, not only the sovereign or the state but also the citizens could recover their goods and rights. Goods, claims, titles and honours fell under the restitution clauses.[69] Exception had to be made for goods already consumed. Only an explicit clause could deviate from this rule and permit some kind of compensation. In principle the sovereign had to respect the rights acquired by his subjects.[70] Restitution did not apply to goods which had in the meantime been inherited or valuables already transmitted to the treasury.[71] Treaties could deviate from these general rules. In this respect Gudelinus referred to a peace treaty from 1543 between Charles V (1516–58) and the rebellious city of Ghent, a rare instance of him using a recent historical example.[72]

A remaining question which Gudelinus had to deal with was what happened to profits gained on an estate during the occupation of that estate.

He agreed on that point with the majority view expressed in the medieval legal doctrine. He rejected the thesis of Jason that when there was full restitution the profits had to be included, and he found support for this in Accursius amongst others. According to Gudelinus the profits, once separated from the goods in question, constituted a separate good and were not included in the decision of restitution of the properties concerned.[73] Under private law, profits were included in the obligation of restitution in cases where the question could be raised of fraud or *male fide* possession: in these cases the possessor had no right whatsoever to benefit from the profits. During war, however, the law of war prevailed, which allowed that one could enjoy the profits of occupied goods.[74] Gudelinus again excluded rebellious subjects from the right to keep the profits. Only when circumstances compelled him to do so could the sovereign accept retention of the profits generated by goods held by the rebels, like Barbarossa had done in 1183.[75]

Gudelinus' views fitted remarkably closely with the accepted practice. Important peace treaties, from the fifteenth century onwards – even long-lasting truces like those between France and England during and after the Hundred Years War – usually contained extensive clauses of restitution. In principle restitution was ordered for all goods, rights and honours confiscated by the enemy during the war. An exception was normally made for profits and rents.[76]

PRIVATE RIGHTS AND THE COMMON GOOD

In chapter six, Gudelinus dealt with the question of whether a sovereign could, in the course of a peace negotiation, dispose of the goods and rights of his subjects. First he postulated that a sovereign, apart from his own patrimony, could transfer ownership of all the goods belonging to the realm or to the public domain. With an appeal to the Spanish jurist Fernandus Vasquius (1512–69), however, Gudelinus stated that this prerogative was not unequivocal for goods over which the sovereign was not the *dominus*, such as the properties of his subjects. The extent of the royal power was a matter for serious doubt.

These doubts did not concern lands occupied or goods captured during the war. Under the law of war, these lands and goods had changed owners, a situation that could be confirmed by treaty. The same applied to the right for compensation for war damages. Gudelinus saw a problem only in the case where rebellious subjects had occupied lands or damaged private goods and could, by virtue of an agreement, keep them or not be bound to payment for damages. The Louvain jurist referred explicitly to the pacification of the Netherlands, and more specifically to the Twelve Year Truce (1609–21).[77]

Gudelinus left it in no doubt that the sovereign could not transfer ownership of goods and rights of his subjects under any circumstance. Even when one agreed that the sovereign was not bound by the *jus civile* or the municipal law, he had to abide by the natural law that imposes respect for the property of others. Again Gudelinus referred to Vasquius in order to give more weight to his argument.[78]

This natural law principle however was not absolute. When the need was compelling or the public interest made it appropriate, the sovereign could dispose of private goods and rights. He could do that particularly when this was the price to be paid for achieving peace. The fact that the goods concerned had been already in other hands for a long time was therefore an important element, according to Gudelinus.[79] For this the jurist also found a close connection with the prevailing treaty practice.[80] Precisely due to the fact that one did not wish to turn upside down situations that had been in force a long time, and not wanting to provoke endless legal disputes, the general practice for treaties – also in other situations than just in the struggle against rebels – was to renounce the restitution clause.[81] Gudelinus, however, merely restricted himself to the example of the Roman civil wars.[82]

This exception did not imply that the divine law or the natural law could in some cases be put aside. There were indeed many rules which fell under these categories and between them an internal hierarchy prevailed. '*Salus populi suprema lex*' was for Gudelinus as much a rule of divine and natural law as the rules of mine and thine. God and nature had entrusted the sovereigns with the care of the entire *societas humana*. Their responsibility for the common good was more important than for the private interest. When peace was at stake, other rules of law must recede. These views indicated the influence of Vasquius and through him of the neo-scholastic school.[83]

Chapter seven was the logical complement to what had preceded. Here it was established whether private persons could, in case of transfer of their properties or rights, be entitled to compensation at the expense of the public domain. For Gudelinus such claims existed in principle.[84] He thereby referred to the example of the *lex Rhodia de jactu*, which according to him was valid not only for the whole of the Empire but also outside it, on the basis of the *aequitas* of this law. The *lex Rhodia* dealt with the case of a sea captain who had to throw part of his shipment overboard in order to save the ship, in which it was determined that the damage incurred should be spread amongst all owners concerned.[85] Therefore, Gudelinus was of the opinion that war damages – or more exactly damages caused by the peace compromise – specifically inflicted on certain private persons also had to be supported by the collective.[86] Furthermore the Louvain jurist referred once

again to several examples from the time of the Roman Republic and the civil war.[87] In two instances the claim for damages became invalid: first when the person concerned bore responsibility himself for the damage and second when the damage was of such magnitude that the possessions of the sovereign or the treasury could barely meet them.[88]

JUDGEMENTS AND AGREEMENTS

Chapter eight was also devoted to an aspect of the impact of war and peace on private rights, namely the validity of judgements pronounced by the enemy during the war and of agreements made between enemies before or during the war. The first instance essentially concerned judgements pronounced by the enemy in occupied territories which afterwards changed owners again, and also judgements pronounced during the war against foreign, hostile subjects.

According to Gudelinus this problem had to be approached the same way as the question of restitution. The restitution clauses served the purpose of reinstating everybody to his pre-war legal status as far as possible. This implied that all one-sided legal acts and decisions of the enemy as well as all legal acts committed with hostile intent because of the war had to be recalled. Legal acts completed between enemies during a war, but belonging to the normal legal life, like the compliance with a contractual obligation, did not come under the principle of restitution.[89]

Gudelinus' more specific comments on the question of the validity of judgements pronounced during the war and between enemies were very brief. In principle these judgements retained legal force, because the belligerent on the basis of the law of war had jurisdiction over territories of the enemy. This was of course not the case as far as rebels were concerned. Therefore, explicit agreements had to be made with respect to judgements pronounced by a rebel force, as set out in the *Pax Constantiae*.[90]

RELIGIOUS WARS

After this extensive exposition concerning private goods and rights, Gudelinus turned back to more traditional themes of the law of war and treaty law. He opened chapter nine with the general assertion that care for religion was the most important responsibility for a sovereign and that no better motive for war existed than the defence of the faith.[91] Agreements with heretics, whereby they were granted some concession in religious matters, could only be made in extreme cases. Gudelinus referred to the example of religious pacification in the sixteenth century in the Empire as well as in France.[92]

Gudelinus rejected the counter-argument that exceptions could be given on the grounds that any obligation to perform unlawful actions was prohibited in the private law of contract. He was of the opinion that the act of tolerating heresy did not mean an acceptance of it. Christian Emperors like Constantine the Great (312–37), Theodosius the Great (379–95) and Justinian tolerated paganism, divorce, usury and concubinage, as Christianity was not yet completely established. For Gudelinus tolerance towards heresy could only be a temporary measure, which had to emanate from necessity.[93] He called in fact upon Gratian (*c*.1100–1160), who also held the opinion that a pact with heretics was allowed when necessity compelled it.[94] He also found a supplementary argument in the divine origin of sovereignty. In extreme necessity the sovereign had the duty to make concessions to his recalcitrant subjects in order to protect his sovereignty as far as possible.[95]

THE BINDING POWER OF PEACE TREATIES

The legality or binding power of a peace treaty is founded on the *fides*, from which the term *foedus* is in fact derived, Gudelinus stated. The peace treaty is sacrosanct and cannot be infringed. To describe the concept of fidelity Gudelinus turned to the definition given by Cicero (106–43 BC): *dictorum conventorum constantia*.[96] He indicated that the binding power of peace treaties was all the more forceful as they were generally ratified by oath. This had also been the case with the *Pax Constantiae*. The binding force of an oath was not only recognized by Christians, but also by pagans.[97]

There could be no doubt about the faith placed in one's word given to the enemy in the course of a war. Gudelinus appealed for this to Bartolus amongst others. He did not agree, however, with Bartolus and other commentators like Raphaël Fulgosius (1367–1427) who made a distinction between private and public agreements and treaties. The rule of good faith was indeed prescribed by natural law and was universal. In addition he referred to several literary sources from Antiquity as well as to Augustine (354–430), Franciscus Duarenus (1509–59), Diego de Covarrubias (1512–77) and Ayala, in support of his thesis.[98]

If one has to keep good faith towards the enemy during a war, how much more must this be the case after a war, Gudelinus asked. By this he wanted to introduce a further argument in favour of the inviolability of peace treaties.[99]

Gudelinus was very brief on the problem of the violation of peace treaties. He defended the thesis that when the adversary broke his word, the injured party could consider the whole of the treaty as obsolete.[100] The

Dutchman Grotius was to devote a much more comprehensive discussion to this theme.[101] Gudelinus took no account of the custom in treaty practice of inserting sanctions in the event of violations on the part of subjects or allies, thus guaranteeing a permanent binding to the treaty.[102] For rebellious subjects a treaty with the sovereign had the force of a real royal statute, and not of a contract. Therefore infringements were commonly punished without detracting from the validity of that 'statute'. For once Gudelinus could refer to the comments by Baldus on the *Pax Constantiae*.[103] Sanctions for such infringements belonged, according to Gudelinus, to the *imperium* of the sovereign rather than to the jurisdiction of the courts.[104]

FIDES WITH REGARD TO REBELLIOUS SUBJECTS

In light of the uprising in the Netherlands and the Twelve Year Truce between the Estates-General of the rebellious provinces and the Spanish King, Gudelinus could not ignore the problem of the fidelity to the treaty on the part of the sovereign towards his own rebellious subjects.[105] A number of authors, including Ayala, maintained that the sovereign was not bound to his agreements with rebels. Rebellious groups were well advised when they involved another sovereign to make an agreement in their name.[106] Gudelinus rejected Ayala's opinion and believed that sovereigns were also bound by agreements and pacts with their own subjects. This obligation was not based on the fact that the sovereign submitted to the *jus civile*, as Vasquius maintained, but on his subordination to natural law and to the law of nations, as Duarenus and Panormitanus (d.1445) put it.[107]

In the following paragraphs, Gudelinus refuted a number of possible counter-arguments. Equating rebels with robbers and pirates was not sufficient reason for the sovereign to be released from his given word towards them. For Gudelinus the fact that the sovereign made an agreement with his rebellious subjects was sufficient evidence that he considered himself bound by it. Of this the 1183 *Pax Constantiae* was a classic example.[108]

Exceptions of duress and fear, *vis metusve*, could only be invoked, according to Gudelinus, by private persons, in order to escape an agreement. In relation to his rebellious subjects the sovereign could not escape and was at all times bound by the agreements made with his subjects. Gudelinus did not, however, recognize a general difference between private law and public law concerning the binding force of treaties and the problem of *fides*. He based his thesis on other arguments. Bravery and firmness were royal virtues. A sovereign was not easily subject to fear or coercion. Only in extreme circumstances was it conceivable that a sovereign would be forced against his will to an agreement, but in this event it would have been very

unlikely that the rebels would have remained interested in such an agreement. Gudelinus held the opinion that discussions around the exception of *vis metusve* had no ground.[109] Furthermore the lesser interest did not diminish from the greater one, and what was more important than peace?[110]

THE BINDING POWER OF PEACE TREATIES ON THE SUCCESSORS OF THE TREATY PARTNERS

In his last chapter, Gudelinus elaborated on a problem which stood central in treaty practice as well as in the doctrine of the late Middle Ages and Early Modern period. Until late in the sixteenth century treaties between rulers could hardly be distinguished on a formal legal basis from common agreements between private persons under private law. These were not inter-state but inter-sovereign agreements. Treaties did not mention states as parties to the treaty, only sovereigns. This was also generally and to some extent the case with republics, where reference was made to the head of government or, at best, to a collective governing body.[111]

Because agreements were concluded between persons, not bodies politic, this posed the problem of the binding force of treaties towards the successors of the sovereigns who had made a treaty. Until the sixteenth century, in practice it was considered that the successor of somebody who was a party to a treaty had to ratify the treaty explicitly before he was bound by it. Some treaties stipulated a term after the succession to the throne within which the new sovereign had to perform this, if he wanted the treaty to remain valid. Sometimes the successor was made to ratify the treaty while the partner in the treaty was still alive.

Gudelinus started his exposition by quoting some examples from Antiquity demonstrating that the binding of the successors was not an automatic fact.[112] Then he joined Ayala in his argument for validity. On the basis of text fragments from different medieval canonists, Ayala stated that peace was an agreement under public law. The sovereign did not make the treaty in his own name but in the name of the *res publica*, which was perennial. Just as an ecclesiastical prelate could bind the Church beyond the limitations of his own term of office, the sovereign could bind the state. Even changes in the form of government had no influence on the binding force of a treaty.[113]

Gudelinus took a remarkable position regarding the oath. Until late in the seventeenth century, most treaties were confirmed or ratified through an oath sworn by the sovereigns. In the Middle Ages and even in the early sixteenth century it was generally accepted that only by this swearing of the oath did the treaty achieve binding force. From this, an argument could be

constructed for the thesis that treaties were not binding for the legal successors. According to many jurists the oath was indeed not transferable. Gudelinus did not take up a position over the question of whether an oath was personal or transferable. But he stated that not the oath but the *conventio* was the *causa principalis* of the agreement. The oath provided only an extra guarantee by means of the sanctions imposed through perjury.[114] This position was in accordance with the evolution of this practice in the sixteenth century and was adopted by the natural law jurists of the seventeenth and eighteenth centuries.[115]

With the thesis in favour of the validity of treaties with regard to successors, Gudelinus, just like Ayala and Grotius, stood at the beginning of the autonomization of statutory inter-state treaties, separated from the private law of contracts. Like both his predecessors, Gudelinus accepted the distinction between private agreements and treaties on the one hand and public treaties on the other. That distinction, however, only brought about a few concrete results. The most important, no doubt, was the unequivocal acceptance of the legal force of treaties towards successors. It also acted a few times as an argument when interests under private law had to give way to the common good.

The idea that a sovereign made a treaty on behalf of the state had developed gradually in the course of sixteenth-century treaty practice. This could be seen amongst other things in the reversion to the custom whereby sovereigns brought their main vassals and the mightiest cities of the realm to co-sign and co-ratify a treaty. To the extent that treaties were personal commitments by the rulers themselves, they could in fact only indirectly bind their subjects. They promised to their partner in the treaty that they would use their domestic powers for the execution of the clauses of the treaty. As an extra guarantee the partner often requested the direct approval of the treaty by the most powerful vassals and cities within the realm of his partner. The binding force of treaties towards legal successors also underwent an evolution within the legal practice of the sixteenth century.[116]

Here doctrine tailed somewhat behind the evolution of practice. Like other authors before and after him, Gudelinus looked for inspiration to the Roman concepts pertaining exclusively to public law of the *foedus*, when at the beginning of his treatise he catalogued peace treaties as *foedera*. It is indeed noticeable that, when discussing the only important legal result which he linked to the public character of peace treaties, he did not refer to the distinction between *foedera* and other kinds of agreements, but restricted himself to more pragmatic and contemporary arguments.

THE HUMANIST LEGAL DOCTRINE

The professorship of Petrus Gudelinus at the University of Louvain coincided with the heyday there of humanism. Humanism also influenced the Law Faculty. The first humanist scholars who had exerted influence upon the study of legal doctrine were Lorenzo Valla (1407–57) and Angelo Poliziano (1454–94). They lectured that knowledge of classical Latin and a correct understanding of ancient history were necessary conditions for the study of Roman law. From this position they made fierce criticisms of the works of the glossators and in particular of the commentators, like Bartolus and Baldus.[117]

In the early sixteenth century humanist legal doctrine flourished, mainly at the University of Bourges in France. The Frenchman Gulielmus Budaeus (1468–1540) and the Italian Andreas Alciatus (1492–1550) are rightly considered to be the real founders of the *mos gallicus*. Nowadays legal history no longer claims that the *mos italicus* or Bartolism and the *mos gallicus* or humanism were diametrically opposed.

The concern of humanist jurists was to reconstruct the juridical *auctoritates* in their original form. They recognized that the *Corpus juris civilis* had been the product of its time and age, within a specific civilization. An exact interpretation of the texts needed, in their opinion, an understanding of the historic conditions under which these texts, and the legal regulations which they contained, had developed. The philological–historical concern of the humanists resulted in sharp criticism of the works of their medieval predecessors.

The humanist approach led to a relativization of the authority of the ancient legal texts. No longer were they perceived as the emanation of a timeless, unchanging and ideal legal system. The *Corpus* of Emperor Justinian was from then on looked at for what it was: the legal system of a particular civilization, which came about in a specific place and time, but which was still unparalleled and worthy of being studied and followed.

Although one will certainly find examples of humanists whose interest in Roman law was mainly of an antiquarian nature and for whom the study of Roman law was an erudite and esoteric occupation, far remote from actual practice, this did not apply to the vast majority of learned jurists who are traditionally designated as ‘humanists’. The second generation of French humanist Romanists, such as Jacobus Cuiacius (1522–90) and Hugo Donellus (1527–91), had a great interest in practice and neither confined themselves to the application of Roman law alone. The relativization of the claims to timelessness and invariability of Roman law saw to it that humanists of the second generation became more interested in the study of their own municipal customary law.

Armed with the philological–historical method, humanist jurists wanted to acquire a better and more correct understanding of the Roman law than had been possible for the commentators. However, this did not result in an underestimation of the achievements brought about by Bartolism. Rather they tried to improve the works of Bartolus and Baldus by using this method.

Humanist jurists did not blow up the bridges between legal doctrine and practice that had been laid by the medieval jurists, but they adjusted the relationship between theory and practice. The commentators had, on the basis of the almost absolutist claims of the *Corpus*, mainly endeavoured to make Roman law relevant to contemporary legal practice. Their démarche was that of scholastic–dialectical interpretation and reinterpretation of the authoritative sources, with the objective of finding an answer that was useful and desirable for the legal problem at hand. On the other hand, jurists influenced by humanism perceived Roman law more as an historic example to be followed rather than a timeless and perennial system. With these beliefs they tried to transfer the strengths and richness of Roman law onto contemporary law. Rather then adapting Roman law to the needs of practice, they wanted to bring contemporary law nearer to the learned law. In this manner they contributed significantly to the scientification and systematization of both the municipal law systems and the law of nations.[118]

CONCLUSION

Humanism made its way to the Louvain Civil Law Faculty thanks to Nicolaus Everardus (1462–1532) and chiefly Gabriel Mudaeus (d.1560). They were followed by the majority of professors in Civil Law who pursued a line of moderate humanism, combining a philological–historical approach with a keen interest for legal practice. Within this tradition of the Louvanist *via media* between *mos italicus* and *mos gallicus*, they did not disregard the study of the works by the great commentators. In the first half of the seventeenth century, humanism in Louvain flourished, with figures like Erycius Puteanus (1574–1646) and Nicolaus Vernulaeus. This was also felt at the Faculty of Civil Law.[119] Gudelinus came under the influence of humanism. This had already been shown in the introduction to his *De jure novissimo* where he announced that he would use as his basis the amended text edition of the *Novellae*. In *De jure pacis commentarius* Gudelinus appears as an advocate of the *via media* held by the humanist legal tradition in Louvain.

First of all, his treatise was written in a sober but classic Latin. He made, with one exception, no references in Greek.[120] Secondly, several times

Gudelinus makes an explicit use of the philological–historical method of the humanists. Thereby, he does not avoid criticizing medieval Bartolists, nor even ancient jurists. Thus he rejects the assertion by Ulpian that *pactio* was an etymological derivation of *pax*, and not the reverse.[121] On other points he rejects the interpretations concerning content, as made by the glossators and commentators.[122] This does not prevent him from frequently referring to the opinions and arguments of his medieval predecessors, Romanists as well as canonists. He does not accept their opinions as unassailable authorities, but enters into debate with them. Thirdly, Gudelinus makes frequent use of historical examples from Antiquity. Undoubtedly, Gudelinus was less familiar with ancient literature than with text traditions of medieval learned law. Many of the examples out of ancient literature he borrows from Ayala, or from the classic *topoi* of his time. Also he continually quotes from the same, important ancient writings. Livy is by far the most quoted.

The fourth and most striking characteristic of Gudelinus' treatise is, however, his obviously great understanding of treaty practice. Although he seldom refers to examples from recent history, his work bears witness to his concern for the problems and issues which appeared in treaty practice of his own time. His perspective is thereby rather dominated by the problems which had arisen on account of the war against the rebellious Northern Netherlands, but it is not limited by them. His relatively great interest in the struggle against rebellious subjects and religious dissenters had its origins in the uprising.

The best developed and at the same time the most original parts of his treatise are the chapters dealing with private property and rights after the war. On the one hand Gudelinus enters into the discussion of the extent of royal authority, which was then a popular topic in political literature. The works of Jean Bodin and the neo-scholastics, and especially the work of Vasquius, often quoted by Gudelinus, have to be mentioned. But on the other hand his treatment of restitution reaches much further than any other older treatise and is even more detailed on the point of the restitution of property from private owners than the work of Grotius a few years later. Also noticeable is the important parallel between the propositions of Gudelinus and the treaty practice of the sixteenth and early seventeenth centuries. By this the Louvain humanist contributed to the scientification of customary treaty law.

Gudelinus' treatise should be placed in the midst of a process of autonomization of the law of nations from the learned legal tradition. Formally Gudelinus places his treatise within the tradition of the *jus commune* by presenting it as a commentary on the *Pax Constantiae*. But as he immediately remarks, his treatise is more than a comment on the Peace Treaty, it is a systematic discussion of the current treaty law. Where he can,

and where he considers it useful, he refers to the medieval tradition of the learned law. For in so far as treaty law is still part of general contract law, this is entirely legitimate. Where this is not possible, he is not afraid of presenting independent arguments, in which he places the specific practices of treaty law within a doctrinal context.

Gudelinus did not exercise much influence on the further development of the doctrine of the law of nations.[123] There is, perhaps, a simple explanation in the very fact that this work preceded the masterpiece of the great Dutch jurist by only a few years. The impact of *De jure belli ac pacis* was immediately so tremendous that older treatises, which were relevant for the law of nations, were neglected by the late seventeenth and eighteenth centuries. Moreover, in the seventeenth century, the Southern Netherlands had no important theorists in the law of nations who could have given Gudelinus' *De jure pacis commentarius* – in spite of its numerous reprints in Louvain, Antwerp and Cologne – more international fame.[124]

NOTES

1. Petrus Gudelinus, *De jure pacis commentarius, in quo praecipuae de hoc jure quaestionis distinctis capitibus eleganter pertractantur*, Louvain, 1620. It is not clear when Gudelinus conceived and wrote his *De jure pacis*. It is however probable that he wrote it as an addition to his commentaries on the *Libri feudorum* and that he gradually completed the manuscript in the same way as he did for his other works directed towards his teaching. From a fairly clear reference to the Twelve Year Truce, it can be deduced with certainty that he still worked on it after April 1609: *De jure pacis* 6, 2 in *Opera omnia*, Antwerp, 1685, 557.
2. The different later publications are: *De jure pacis commentarius, in quo praecipuae de hoc jure quaestionis distinctis capitibus eleganter pertractantur, editio secunda*, Louvain, 1641, *editio tertia*, Louvain, 1663, *editio quarta*, Cologne, 1663. A notable publication is: *De jure pacis commentarius: in quo praecipuae & nunc maxime, dum de Europae Pace Monasterii agitur, necessariae de hoc jure quaestionis proponuntur & expenduntur. Accedit Marci Zuerii Boxhonii de amnestia dissertatio*, Leiden, 1648. There was also a publication in 1662 in Arnhem. The work has also been published at different times together with Gudelinus' comments on the *Libri feudorum*: Petrus Gudelinus and Henricus Zoesius, *De jure feudorum et pacis commentarii, ad mores Belgii et Franciae conscripti, quibus in hac iterata editione accessêre Henrici Zoesii...Praelectiones Feudales, nunc primum editae*, Louvain, 1641; Petrus Gudelinus and Henricus Zoesius, *De jure feudorum et pacis commentarii ad mores Belgii et Franciae conscripti...editio tertia correctior*, Louvain, 1663; Petrus Gudelinus, Hieronymus Nempaeus and Henricus Zoesius, *De jure feudorum et pacis commentarii...Praelectiones feudales, editio quarta correctior*, Cologne, 1663. Twice it was published with his commentaries on the *Novellae*: *Commentariorum de jure novissimo libri sex...Accessit...Maximiliani Wittebort,...in authoris obitum oratio funebris, habita in exequiis 22. October. 1619, una cum commentario de jure pacis. Editio novissima*, Frankfurt, 1668 and Frankfurt, 1669. In 1685 the *opera omnia* of Gudelinus were published: *Opera omnia in unum volumen redacta*, Antwerp, 1685. René Dekkers, *Bibliotheca Belgica Juridica. Een bio-bibliografisch overzicht der rechtsgeleerdheid in de Nederlanden van de vroegste tijden af tot 1800*, Brussels, 1951, 64–5.
3. *Tractatus de confederationibus, pace et conventionibus principuum* (in *Tractatus universis*

juris, Venice, 1584, vol.14, 302–3). Ingrid Baumgärtner, *Martinus Garatus Laudensis. Ein italienischer Rechtsgelehrter des 15. Jahrhundert*, Cologne and Vienna, 1986.

4. Balthasar de Ayala, *De jure et officiis bellicis et disciplina militari libri tres* 2, 7, tr. in 2 *Classics of International Law*, 2 vols., Oxford, 1912, vol.1, 74–84; Albericus Gentilis, *De jure belli libri tres* 3, 13 and 14, tr. in 16 *Classics of International Law*, 2 vols., Washington, 1933, vol.1, 576–600. Gentilis also had a chapter on truces: 2, 12 in I, 337–50.
5. Randall Lesaffer, 'The Medieval Canon Law of Contract and Early Modern Treaty Law', 2 *Journal of the History of International Law* (2000), 178–98 at 185.
6. His most important works are: James Brown Scott, *The Spanish Origin of International Law: Lectures on Francisco de Vitoria (1480–1546) and Francisco Suarez (1548–1617)*, Washington, 1928; idem, *The Catholic Conception of International Law: Francisco de Vitoria, founder of the modern law of nations; Francisco Suarez, founder of the modern philosophy of law in general and in particular of the law of nations; a critical examination and a justified appreciation*, Washington, 1934; idem, *The Spanish Conception of International Law and of Sanctions*, Washington, 1934. Recently published on the significance of Scott's work: Christopher R. Rossi, *Broken Chain of Being: James Brown Scott and the Origins of Modern International Law*, The Hague, London and Boston, 1998.
7. Wilhelm G. Grewe, *Epochen der Völkerrechtsgeschichte*, Baden Baden, 1984, 222; Henri Legohérel, *Histoire du droit international public*, Paris, 1996, 23–7; Antonio Truyol y Serra, *Histoire du droit international public*, Paris, 1995, 47–55; Karl-Heinz Ziegler, *Völkerrechtsgeschichte. Ein Studienbuch*, Munich, 1994, 162–5.
8. Ayala, *De jure et officiis bellicis*; Albericus Gentilis, *Hispanicae advocationis libri duo*, 9 *Classics of International Law*, 2 vols., Washington, 1921; idem, *De legationibus libri tres*, 12 *Classics of International Law*, 2 vols., Washington, 1924; idem, *De jure belli libri tres*.
9. On this subject: Randall Lesaffer, 'Het moderne volkenrecht (1450–1750)', 52 *Onze Alma Mater* (1998), 426–51 at 430–37.
10. Regarding the development of diplomacy and diplomatic law: Myres S. Anderson, *The Rise of Modern Diplomacy 1450–1919*, Harlow, 1993, 1–40; Linda S. Frey and Marsha L. Frey, *The History of Diplomatic Immunity*, Ohio, 1999; Garrett Mattingly, *Renaissance Diplomacy*, Boston, 1955, repr. New York, 1988, 233–56.
11. Not however by Peter Haggenmacher who claimed that it was only conceived as a treatise on the laws of war: *Grotius et la doctrine de la guerre juste*, Paris, 1983.
12. Antonio Perez, *Ius publicum, quo arcana et jura principis exponuntur*, Amsterdam, 1657; Diodorus Tuldenus, *De civili regimine libri octo*, Louvain, 1702; Nicolaus Vernulaeus, *Institutionum politicarum libri quattuor*, Louvain, 1623; Franciscus Zypaeus, *Iudex, magistratus, senator,* Antwerp, 1633. On the works of Tuldenus, Vernulaeus and Zypaeus regarding international law: Randall Lesaffer, 'Vernulaeus, Zypaeus and Tuldenus : het recht van de oorlog in de Spaanse Nederlanden tijdens de laatste fase van de Tachtigjarige Oorlog (1621–1648)', 8 *Ex Officina* (1991), 32–70.
13. Pronounced on 22 October 1619, and included in the publication of Gudelinus' *Commentarium de jure novissimo libri sex*, Antwerp, 1620, 333–8.
14. According to his biographer Wittebort, once appointed and having reached the age of 40, Gudelinus decided that the time had come for marriage. There was no shortage of candidates keen on marrying him, as it was said that *destinantur illi complures, et grandi dote ultro citroque invitatur*. Finally he married Marie van der Steghen, a daughter of a councillor of the Council of Brabant. They had three sons and four daughters. *De jure novissimo*, 336.
15. For biographical information: G. Nypels, 'Goudelin (Pierre)', in *Biographie nationale de Belgique*, Brussels, 1884, vol.8, 161–3; Dirk van den Auweele, 'Petrus Gudelinus', in Guido Van Dievoet et al., eds., *Lovanium docet. Geschiedenis van de Leuvense Rechtsfaculteit (1425–1914)*, Louvain, 1988, 85–7.
16. Like his *De jure pacis*, these works were also published in printed form only after his death: *De jure novissimo libri sex, optima methodo accurate et erudite conscripti, additis harum vicinarumque regionum moribus*, Antwerp, 1620; *De jure feudorum commentarii, ad mores Belgii et Franciae conscripti*, Louvain, 1624.

17. Gudelinus, *De jure novissimo*, 2.
18. Gudelinus, *De jure novissimo*, 3.
19. *Novellae graecae sine glossa*, Nüremberg, 1531.
20. *Verum loco earum adferam constitiones Frederici & quorundam aliorum omni saeculo, tam in Codice sub eodem Authenticarum nomine, quam ad Libros Feudorum corpore iuris annexas, quia hoc apud nos pro Iure receptae sunt*: Gudelinus, *De jure novissimo*, 3.
21. *Addam denique mores harum vicinarumque Regionum saltem frequentiores, ut sit haec studiosis quaedam ad patrias leges Isagoge...*: Gudelinus, *De jure novissimo*, 3. See also the full title of his commentaries on the *Libri feudorum*: *De jure feudorum commentarii ad mores Belgii et Franciae conscripti*. Wittebort also pointed to this interest of Gudelinus for customary law: *…sed variorum etiam consuetudinum, quarum peritissimus erat*. Gudelinus, *De jure novissimo*, 337. See also: Victor Brants, *La Faculté de Droit de l'université de Louvain à travers cinq siècles (Etude historique)*, Paris and Brussels, 1920, 153.
22. Gero Dolezalek, 'I commentari di Odofredo e Baldo alla pace di Constanza', in *La pace di Costanza 1183*, Bologna, 1984, 59–61 and 67; Kenneth Pennington, 'Baldus de Ubaldis', 8 *Rivista internazionale di diritto commune* (1997), 35–61 at 51; Hermann Lange, *Römisches Recht im Mittelalter*, 2 vols., Munich, 1997, vol.1, 92–93.
23. On the text tradition: Ettore Falcone, 'La documentazione della pace di Costanza', in *Studi sulla pace di Costanza*, Milan, 1984, 21–104; Karl Lehmann, *Das Langobardische Lehnrecht (Handschriften, Textentwicklung, ältester Text und Vulgatext nebst den capitula extraordinaria)*, Göttingen, 1896; E. Seckel, 'Quellenkunde zum lombardischen Lehnrecht, insbesondere zu den Extravaganten-Sammlung', in *Festgabe der Berliner Juristen Fakultät für Otto Gierke*, 3 vols., Breslau, 1910, vol.1, 110–11 and 145–68.
24. Lange, *Römisches Recht im Mittelalter* I, 331–2; Ernst Adolph Laspeyres, *Über die Entstehung und alteste Bearbeitung der Libri Feudorum*, Berlin, 1830, 91 and 110–11; Kenneth Pennington, 'Baldus', 50–52; Nino Tamassia, 'Odofredo. Studio storico-giuridico', in *Scritti di storia giuridica*, Padua, 1964, vol.1, 365–6.
25. Dolezalek, 'I commentari di Odofredo e di Baldo', 61–3.
26. In the 1628 edition of the *De jure feudorum commentarius* Gudelinus' comments on *De jure pacis* have also been added.
27. Petrus Gudelinus, *De iure pacis commentarius*, 1, 1–2, in *Opera omnia*, Antwerp, 1685, 549–64, at 551.
28. *…attamen sensui & naturali disciplinae ordini conventientior est ordo, qualis est in Institutionibus quod attinet ad Ius privatum*: Gudelinus, *De jure novissimo*, 3.
29. Charles Dumoulin (1500–1566) had made it clear in his *Commentarii in consuetudines Parisienses* that the principal thesis of Baldus, namely that the treaty of 1183 had only been valid for 30 years, was historically wrong. The importance of Baldus' commentaries were as a result strongly devalued. See on this: Dolezalek, 'I commentari di Odofredo e Baldo', 66.
30. *Equidem non decrevi praesertim pacem illam Constantiensem sequi (quod a Baldo aliisque nonnullis factum est) ne potius, Historiam, extra possessionis meae terminos, quam Ius tradere videar; cum illa Pax fit res jam pluribus saeculis praeterita, atque adeo vis ejus plane exolata; verum quaedam inde eliciens, reliqua vero ex aliis Iurisprudentiae partibus, ejusque interpretationibus conquirens, perfectum & cohaerens quoddam de jure Pacis corpus exhibebo, eoque breviter praecipuas & optimas quasque de hoc jure quaestiones, disputationesque, distinctis capitibus, sicut feci in jure Feudorum pertractando, complectar*: *De jure pacis*, 1, 2 at 551.
31. *De jure pacis*, 549–64, text from 551 on.
32. Gudelinus, *De jure pacis*, 10, 1 at 561.
33. For the commentaries by Baldus de Ubaldis, see *Super usibus feudorum et commentum super pace Constantiae*, Rome, 1474 or *Baldi in feudorum usus commentaria et commentariolum eiusdem Baldi super pace Constantiae*, Venice, 1580, 96–104. Dolezalek, 'I commentari di Odofredo e Baldo', 71–5. The references by Gudelinus to Baldus' commentaries remain scarce.

34. Randall Lesaffer, *Europa, een zoektocht naar vrede? (1453–1763 en 1945–1997)*, Louvain, 1999, 251–5; Klaus Neitmann, *Die Staatsverträge des Deutschen Ordens in Preussen 1230–1449. Studien zur Diplomatie eines spätmittelalterlichen deutschen Territorialstaates*, Cologne and Vienna, 1986, 381–411.
35. Hugo Grotius, *De jure belli ac pacis libri tres* 3, 20 and 21, ed. by Robert Feenstra et al., Aalen, 1993, 825–68.
36. Relevant are the chapters about the law of contracts and treaties in general: Grotius, *De jure belli ac pacis* 2, 11–15 at 326–406.
37. Grotius, *De jure belli ac pacis* 3, 20, 7–22 at 829–33.
38. Grotius, *De jure belli ac pacis* 3, 20, 27–41 at 834–40.
39. Grotius, *De jure belli ac pacis* 3, 19 at 813–24.
40. Ayala, *De jure et officiis bellicis* 1, 7 in I, 74–84.
41. *De jure pacis* 1, 3 at 551.
42. *De jure pacis* 1, 4 and 5 at 551–2, with reference to *Inst.* 1.9 and *Dig.* 23.3.
43. *De jure pacis* 1, 6 at 552.
44. Livy 34, 57, 7–9, Loeb edn., London, 1967, 562; *De jure pacis* 1, 6 at 552.
45. *De jure pacis*, 1, 8 at 552.
46. Grotius, *De jure belli ac pacis* 3, 20, 1 at 826.
47. Grotius, *De jure belli ac pacis* 3, 20, 2 at 826–7; *De jure pacis* 2, 1 at 552. Grotius on democracy: 3, 20, 4 at 827–8.
48. Joseph Plescia, 'The *ius pacis* in Ancient Rome', 41 *Revue internationales des droits de l'Antiquité*, 3rd series (1994), 301–51 at 324–35; Karl-Heinz Ziegler, 'Das Völkerrecht des römischen Republik', in Hildegard Temporini, ed., *Aufstieg und Niedergang der römischen Welt. Geschichte und Kultur Roms im Spiegel der neueren Forschung*, 2 vols., Berlin and New York, 1972, vol.2, 90–98; idem, 'Friedensverträge im römischen Altertum', 27 *Archiv des Völkerrechts* (1989), 45–62 at 46–7; idem, *Völkerrechtsgeschichte*, 48–9.
49. *De jure pacis* 2, 2 at 552.
50. *X*. 1.30 in Aemilius Friedberg, ed., *Corpus Iuris Canonici*, 2 vols., Graz, 1959, vol.2, cols. 183–6.
51. Ayala, *De jure et officiis bellicis* 2, 7, 5–6 in I, 78–81; *De jure pacis* 2, 3–4 and 6 at 552–3.
52. *Dig.* 2.14.
53. Ayala, *De jure et officiis bellicis* 2, 7, 6 in I, 80–81; *De jure pacis* 2, 7 and 8 at 553.
54. *De jure pacis* 3, 1–3 at 553–4.
55. *Nam hostes laedere & offendere jure gentium fas est; atqui in eo quod jus est, injuria esse nequit*: *De jure pacis* 3, 4 at 554.
56. Grotius, *De jure belli ac pacis* 3, 20, 15 at 832; Emmerich de Vattel, *Le droit des gens ou principes de la loi naturelle* 4, 2, 20, Classics of International Law 4, 3 vols., Washington, 1916, vol.1, 266.
57. Winfried Baumgart, *Vom europäischen Konzert zum Völkerbund*, Darmstadt, 1974, 119; Fritz Dickmann, *Die Kriegsschuldfrage auf der Friedenskonferenz von Paris 1919*, Munich, 1964, 5–6; Jörg Fisch, *Krieg und Frieden im Friedensvertrag. Eine universalgeschichtliche Studie über Grundlagen und Formelemente des Friedensschlusses*, Stuttgart, 1979, 35–278; Lesaffer, *Europa: een zoektocht naar vrede*, 251–4 and 470–72; idem, *Moet vrede rechtvaardig zijn? Het vredesconcept in de historische ontwikkeling van het internationaal recht*, Tilburg, 1999, 20–21.
58. *De jure pacis* 3, 7 at 554.
59. *De jure pacis* 4, 1–2 at 554.
60. Philippe Contamine, 'Un contrôle étatique croissant. Les usages de la guerre du XIVe au XVIIe siècle: rançons et butins', in Philippe Contamine, ed., *Guerres et concurrences entre les Etats européens du XIVe au XVIIIe siècle*, Paris, 1998, 199–236; Maurice H. Keen, *The Laws of War in the Late Middle Age*, London, 1965, 156–88.
61. *Dig.* 49.15.5.2.
62. See for the discussion on the implications of the *jus postliminii in pace* under classical Roman law: Ferdinando Bona, 'Postliminium in pace', 21 *Studia et Documenta Historiae*

et Iuris (1955), 249–76; Maria Floriana Cursi, *La struttura del postliminium nella repubblica e nel principato*, Naples, 1996, 126–36; Fernand De Visscher, 'Droit de capture et postliminium in pace', 3 *Revue internationale des droit de l'Antiquité*, third series (1956), 197–226; Alan Watson, *The Law of Persons in the Later Roman Republic*, Oxford, 1967, 162–6 and references there.

63. For more literature on the *jus postliminii* in general: Luigi Amirante, *Captivitas e postliminium*, Naples, 1950; idem, *Prigiona di guerra riscatto e postliminium. Lezioni*, 2 vols., Naples, 1969; J. Imbert, *Postliminium. Etude sur la condition juridique du prisonnier de guerre*, Paris, 1944; Alberto Maffi, *Ricerche sul postliminium*, Milan, 1992; Joseph Plescia, 'The Roman Ius Belli', 31–2 *Bullettino dell'instituto di diritto romano Vittorio Scialoja*, third series (1989–90), 497–523 at 520–21; Ziegler, 'Völkerrecht des römischen Republik', 105–6.
64. *Dig.* 49.15.12 and 20. Some modern scholars like Watson suggested a partially similar interpretation as Gudelinus' of *jus postliminii in pace* for *Dig.* 49.15.12 pr. According to Watson, it implied that even when nothing had been stipulated in the peace treaty, the ex-prisoner of war upon his return could claim his property and rights back under Roman law: Watson, *Law of Persons*, 248–9.
65. *De jure pacis* 4, 3–4 at 554–5.
66. *Dig.* 49.15.5; *De jure pacis* 4, 5 at 555. He thereby implied what Mommsen would later understand as being natural enmity: Theodor Mommsen, *Römische Staatsrecht*, 3 parts in 5 vols., Leipzig, 1877, vol.3:1, 590–91.
67. *De jure pacis* 4, 6 at 555.
68. *De jure pacis* 4, 7 at 555.
69. Church benefices could also be included. Gudelinus was not impressed by the opinion that confiscating them could have been seen as an assault on ecclesiastical jurisdiction. Public peace had precedence: *De jure pacis* 5, 9 at 556.
70. *De jure pacis* 5, 1–4 at 555–6.
71. *De jure pacis* 5, 6 at 556.
72. *De jure pacis* 5, 7 at 556.
73. *De jure pacis* 5, 10 at 556.
74. *De jure pacis* 5, 11–12 at 556.
75. *De jure pacis* 5, 13 at 556–7.
76. Lesaffer, *Europa: een zoektocht naar vrede*, 254–5.
77. *De jure pacis* 6, 1–2 at 557. In the Twelve Year Truce no distinction was made between goods of subjects faithful to Spain and the followers of the Northern provinces of the Netherlands. Some particular rights and claims of Spanish subjects were also permanently renounced: more particularly Arts. 10, 13, 15, 20, 21 and 25, in Jean Dumont, *Corps universel diplomatique du droit des gens*, 8 vols., Amsterdam, 1726, vol.5:2, 100–101.
78. *De jure pacis* 6, 3–4 at 557.
79. *De jure pacis* 6, 5 at 557.
80. Grotius would in essence defend the same propositions: *De jure belli ac pacis* 3, 20, 7 at 829.
81. Lesaffer, *Europa: een zoektocht naar vrede*, 254–5; H. Neufeld, *The International Protection of Private Creditors from the Treaties of Westphalia to the Congress of Vienna (1648–1815). A Contribution to the Law of Nations*, Leiden, 1971, 93–113.
82. *De jure pacis* 6, 6 at 557–8.
83. Lesaffer, *Europa: een zoektocht naar vrede*, 82–9 and 108–9; Guus van Nifterik, *Vorst tussen volk en wet. Over volkssoevereiniteit en rechtsstatelijkheid in het werk van Fernando Vazquez de Menchaca (1512–1569)*, Gouda, 1999, 93–236.
84. Here Gudelinus differs from Vasquius and he does not refer to him on that point. Later Grotius would explicitly mention the propositions of Vasquius with the argument that wars are conducted between rulers and not between citizens: Grotius, *De jure belli ac pacis* 3, 20, 8 at 829–30; Fernandus Vasquius, *Controversarium illustrium aliarumque usu frequentium libri tres* 1, 5, ed. by Fidel Rodriguez Alcade, 2 vols., Valladollid, 1931–34.

85. *Dig.* 14.2.1. See Max Kaser, *Das römischer Privatrecht*, 2 vols., Munich, 1955, vol.1, 477; G. Wesener, 'Von der Lex Rhodia de iactu zum 1043 ABGB', in *Festschrift für Fr. Bärmann*, Munich, 1975, 31–51.
86. *De jure pacis* 7, 1 at 558.
87. *De jure pacis* 7, 2–3 at 558.
88. *De jure pacis* 7, 4–5 at 558.
89. *De jure pacis* 8, 1–5 at 559.
90. *De jure pacis* 8, 6 at 559.
91. *De jure pacis* 9, 1–2 at 560.
92. *De jure pacis* 9, 3 at 560.
93. *De jure pacis* 9, 4 at 560.
94. *Gratiani Decretum* 23, 3 in I, cols. 825–8.
95. *De jure pacis* 9, 7–8 at 560–61.
96. Marcus Tullius Cicero, *De officiis* 1, 7, 23, Loeb edn., London, 1913, 24–5.
97. *De jure pacis* 10, 1–2 at 561.
98. Augustine, *De civitate Dei* 1, 15, Loeb edn., London, 1981, 68–75; Ayala, *De jure et officiis bellicis* 1, 6, 1–3, I at 56–8. *De jure pacis* 10, 3–5 at 561.
99. *De jure pacis* 10, 5 at 560.
100. *De jure pacis* 10, 6 at 561.
101. Grotius, *De jure belli ac pacis* 3, 20, 27–41 at 834–9.
102. Lesaffer, *Europa: een zoektocht naar vrede*, 246–7.
103. Baldus, *Commentariolum super pace Constantiae* 1, 8 at 97; *De jure pacis* 10, 7 at 561–2.
104. *De jure pacis* 10, 8 at 562.
105. These themes had already been mentioned by the Frisian jurist Aggaeus van Albada, on the basis of *Les six livres de la République* by Jean Bodin (1530–96), on the occasion of the peace negotiations between the States General and the Habsburg governor in 1579. See: Guus van Nifterik, 'Jean Bodin en de Nederlandse opstand', 3 *Pro Memorie. Bijdragen tot de geschiedenis van het recht in de Nederlanden* (2001), 49–66.
106. Ayala, *De jure et officiis bellicis* 1, 6, 11–12, I, 64–66.
107. *De jure pacis*, 11, 2 at 562. Vasquius, *Controversiarum illustrium* 1, 3, 2.
108. *De jure pacis* 11, 3–5 at 562.
109. *De jure pacis* 11, 6–11 at 562–3. Grotius maintained these points with other arguments: *De jure belli ac pacis* 3, 19, 2–6 at 815–18.
110. *De jure pacis* 11, 10 at 563.
111. Grewe, *Epochen*, 232–4; Lesaffer, *Europa: een zoektocht naar vrede*, 141–3.
112. *De jure pacis* 12, 1 at 563.
113. Ayala, *De jure et officiis bellicis* 1, 7, 10, I, 83–4; Gudelinus, *De jure pacis* 12, 2–3 at 563–4.
114. *De jure pacis* 12, 4 at 564.
115. Lesaffer, 'The Medieval Canon Law of Contract', 192–6; Heinhard Steiger, 'Bemerkungen zum Friedensvertrag von Crépy en Laonnais vom 18. September 1544 zwischen Karl V. und Franz I.', in Ulrich Beyerlin, Michael Bothe, Rainer Hofman and Ernst-Ulrich Petersmann, eds., *Recht zwischen Umbruch und Bewahrung. Völkerrecht - Europarecht - Staatsrecht. Festschrift für Rudolf Bernhardt*, Berlin etc., 1995, 249–64.
116. Lesaffer, *Europa: een zoektocht naar vrede*, 134–8.
117. Guido Kisch, *Studien zur humanistischen Jurisprudenz*, Berlin and New York, 1972, 18.
118. Donald R. Kelley, 'Civil Science in the Renaissance: Jurisprudence Italian Style', 12 *The Historical Journal* (1979), 777–94; idem, 'Civil Science in the Renaissance: Jurisprudence in the French Manner', 2 *Journal of the History of Ideas* (1981), 261–76; Kisch, *Studien zur humanistischen Jurisprudenz*, 19–60; Richard J. Schoeck, 'Humanism and Jurisprudence', in Albert Rabil, ed., *Renaissance Humanism: Foundations, Forms and Legacy* , 3 vols., Philadelphia, 1988, vol.3, 310–26.
119. Brants, *La Faculté de Droit*, 110–25; Robert Feenstra, 'Bartole dans les Pays-Bas (anciens et modernes) avec additions bibliographiques à l'ouvrage de J.L.J. Van de Kamp', in *Bartolo da Sassoferrato. Studi e documenti per il VI centinario*, Milan, 1962, 175–97; Jozef

Ijsewijn, 'Humanism in the Low Countries', in Rabil, *Renaissance Humanism*, II, 165–7; Dirk van den Auweele and Michel Oosterbosch, 'De Leuvense universiteit en haar rechtsfaculteiten in de 15de en 16e eeuw: onderwijs, onderzoek en organisatie', in: Van Dievoet, *Lovanium docet*, 16–31.

120. It concerns the etymology of the word '*amnestia*': *De jure pacis* 3, 5 at 554.
121. *De jure pacis* 3, 1 at 553.
122. For instance his criticism on the expansive text interpretation by Accursius regarding the *jus postliminii* : *De jure pacis* 4, 4 at 554–5.
123. Neither Perez nor Zypaeus referred in the relevant parts of their treatises to Gudelinus : Perez, *Ius publicum* 111–12 and 270–77; Zypaeus, *Iudex* 4, 1, 7 and 4, 20–21 and 4, 25–6 at 134–5, 166–71 and 172–4.
124. I am greatly indebted to Andries Baron Van den Abeele for his help with the translation into English.